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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,783	10/17/2003	Richard R. Heuser	HEU 309	9851
23581 7590 12/21/2006 KOLISCH HARTWELL, P.C. 200 PACIFIC BUILDING 520 SW YAMHILL STREET PORTLAND, OR 97204			EXAMINER GHERBI, SUZETTE JAIME J	
			ART UNIT	PAPER NUMBER
			3738	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		12/21/2006	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/687,783

Applicant(s)

HEUSER, RICHARD R.

Examiner

Suzette J. Gherbi

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8-15 is/are rejected.
- 7) ☒ Claim(s) 16 and 17 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant's after final amendment filed 11/13, 2006 has been received in application serial number 10/687,783. Claims 1-7 and 18 are canceled. Applicant Declaration under 37 C.F.R. §1.13. is correct and does comply.

Response to Arguments

Applicant's arguments with respect to claims and the Golds reference 2004/0162603 have been considered, but are moot in view of the new ground(s) of rejection upon updating the search.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 8-11, 13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lentz et al. 5,843, 66. in view of Lam et al. 5,725,572. Lentz et al. discloses the invention as claimed noting figure 1 comprising: a body with an inner layer providing a first flexible covering (12 col. 4, made of e PTFE, lines 54-55) an outer layer with a second flexible covering (22) and a middle wire layer (28 made of nitinol col. 3, lines 60-63) between the inner and outer layers the wire layer providing a compressible self-expanding structure. However the stent of Lentz et al. is a coil wire. Lam et al. teaches a mesh noting figures 1a-5 and further teaches that radiopaque marking are applied to the ends. It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize a mesh middle layer because Lentz states in col. 5, lines 56-60 that any conventional radially expandable stent may be employed. Further it is obvious that utilizing the radiopaque markers on the ends will help with proper placement of the device during deployment.

Claims 1, 12 and 14 are rejected under 35 U.S.C. 102(e) as being anticipated by Bynon et al. 5,667,523. Bynon et al. discloses the invention as claimed comprising: A stent (20) with an outer mesh layer with first and second opposing ends (12, 14); an inner mesh layer (18) defining a shape with opposed first and second ends; wherein the inner mesh layer is fitted within the outer mesh layer and the layers have substantially equal lengths; and a film layer with opposing first and second ends and wherein the film is fitted between the inner and outer mesh layers; and wherein the film layer is made from

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PTFE (col. 7, line 8); wherein the ends of the film layer extend beyond the ends of the mesh layers (see col. 7, lines 47-49).

Allowable Subject Matter

Claims 16-17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Suzette J-J Gherbi whose work schedule is Maxi-Flex off every other Friday and whose telephone number is 571-272-4751.

The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306.

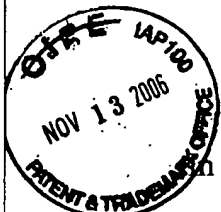
Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


SUZETTE GHERBI
PRIMARY EXAMINER
TECHNOLOGY CENTER 3700

12 December 2006



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

Date: August 1, 2006

RICHARD R. HEUSER

Serial No. : 10/687,783

Our Docket No.: HEU 309

Filed : October 17, 2003

Group Art Unit: 3738

For : STENT WITH COVERING AND DIFFERENTIAL DILATION

Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

DECLARATION UNDER 37 C.F.R. § 1.131

I, Richard R. Heuser, MD, declare as follows:

1. I am the inventor of U.S. patent application Serial No. 10/687,783, filed October 17, 2003, and entitled STENT WITH COVERING AND DIFFERENTIAL DILATION.

2. I completed invention of the STENT WITH COVERING AND DIFFERENTIAL DILATION as recited in the claims of Ser. No. 10/687,783 in this country earlier than May 20, 1999. My conception and reduction to practice is demonstrated by confidential descriptions and drawings that I created. A copy of my descriptions and drawings, which I created and dated earlier than May 20, 1999 are attached as Exhibit 1. The dates in the descriptions and drawings, which have been redacted, are all earlier than May 20, 1999.

3. The descriptions and drawings show my invention, as recited in claim 8, of a stent comprising a wire mesh middle layer with an inner layer providing a flexible covering and an outer layer providing a flexible covering. The wire mesh layer is described in page 1
Page 1 - Declaration under 37 CFR §1.131; Ser. No. 10/687,783